IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 339 OF 1999

The Municipal Corporation of
Greater Mumbai ..Appellant
(Ori.Defendant)

versus

Mohamed Hussain Abdul Sattar ..Respondent
(Ori.Plaintiff)

Mr. A. Y. Sakhare, Sr. Counsel with Mr. V. Mahadik for the Appellants.
None for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 4TH FEBRUARY,2005

ORAL ORDER :

1. Heard Mr. Sakhare for the Appellant - BMC. Respondent is served. Nobody is present for the respondent.

2. This Appeal is filed by the Appellant against the judgment and decree passed by the City Civil Court in Suit No. 6881 of 1992 by Judgment dated 5.3.1998 by which the Appellants were

restrained from demolishing the notice structure under reference by enforcing notice dated 16.9.1992 and Order of the Deputy Municipal Commissioner dated 30.6.1993.

3. Counsel for the appellants, firstly, urged that the perusal of the notice dated 16.9.1992 which is Exhibit ’B’ would show that the notice was addressed to the owner - respondent at 75 Narayan Dhuru Street, Mumbai 400 003 and it was alleged that without permission of the Municipal Commissioner, the respondent have erected illegal structure which was described a as reconstruction of a structure by erecting column beam and joints steel frame work upto second floor admeasuring 37’ x 47’ as shown in red colour in the rough sketch overleaf.

4. Counsel for the appellants pointed out that the notice was addressed to the owner at 75, Narayan Dhuru Street, Mumbai 400 003, then it was the responsibility of the owenr to prove in order to get relief from the court that the structure referred to as 75 Narayan Dhuru Street was there in existence since before the detum line. He pointed out that in order to prove his case the plaintiff - respondent relied upon three documents, viz.passport of the father, ration card and driving licence. These three documents have been referred by the lower

court in paragraph 15. The contention of the plaintiff in the suit was that he was a tenant of Room No.8 situate on 2nd floor and property is described in the plaint was property bearing Municipal Street No. 75-79 Narayan Dhuru Street, Fatima Building, Bombay 400 003. In the ration card Exhibit 'C' address of the plaintiffs grand father is given as 77 Narayan Dhuru Street, 2nd floor, Bombay 400 003. Address in the driving licence is given as 77 Narayan Dhuru Street, and address in the passport is given as 77 Narayan Dhuru Street.

5. Plaint has been filed with this compilation. It is contended that the plaintiff is the tenant of Room No.8 situate on 2nd floor of property bearing Municipal Street No.75-79 Narayan Dhuru and the room on the 2nd floor admeasures 37' x 47'.

6. The structure that is referred in the 351 notice is unauthorised reconstruction of the structure by erecting column beam and joints steel frame work upto second floor.

7. The specific stand of the Municipal Corporation and the order of the DMC dated 30.6.1993 Exhibit 'E' shows that the old building was demolished and new construction started without permission from any of the other Authorities. The

fact of demolition is also noted by the trial court From the notice under section 351, it appears that after demolition a new structure admeasuring 37’ x 47’ upto 2nd floor was erected with iron beams and pillars.

8. If it was the case of the plaintiff that the suit structure was in existence since his grand father and it was Room No.8 on the 2nd floor and above the main building, then the question remains as to why for so many years the building was not shown in the Municipal record. If the building would have been subject to assessment to municipal taxes, and failure of the plaintiff to produce any document of assessments of the suit structure, is strong circumstance that goes against the plaintiff. Secondly, the documents produced by the plaintiff i.e. ration card, passport and the driving licence neither mentions Room No.8 nor they are in respect of 75 Narayan Dhuru street, they are in all respect of 77. It appears that now the plaintiff is trying to take advantage of the similarity of numbers and therefore in the plaint he has described the suit property as 75-79. If the notice addressed to the owner at 75, Narayan Dhuru Street, is the notice on which the plaintiff has filed the suit, then it was necessary and obligatory upon the plaintiff to produce documents regarding 75 Narayan Dhuru Street.

However, all the three documents filed by the plaintiff are in respect of 77 Narayan Dhuru Street and therefore the Appellants - Municipal Corporation was justified in holding against the plaintiff.

9. Secondly, when the Appellants - Municipal Corporation comes with a specific case of demolition and new structure was erected, for which no permission is there, then documents produced about the existence of the old structure would not sufficient and plaintiff should have filed documents relating to the steps taken by for obtaining permission or sanction for new structure not a single document is produced by the plaintiff. 10. These two important aspects of the matter have not at all been considered by the trial court. The trial court also did not took into consideration the difference in the address given in the documents produced by the plaintiff, i.e. passport, ration card and driving licence and the address given in the notice under Section 351. The court has also not properly considered the order of the DMC and the failure of the plaintiff to produce documents about permission for reconstruction. In that view of the matter, the appeal is required to be allowed. Hence, the following order:

ORDER

. Appeal is allowed. Judgment and Decree

dated 5.3.1998 is set aside. No order as to costs. Interim stay, if any stands vacated automatically.

4.2.2005 (D.G. DESHPANDE,J.)